



FREDERICK COUNTY BOARD OF APPEALS

AUGUST 24, 2023

TITLE: Luis Beteta: Accessory Dwelling Unit (ADU)

CASE NUMBER: B-23-16 (B267978)

REQUEST: Requesting approval of a Special Exception to permit an Accessory Dwelling Unit (ADU) Greater than 1,000 sq. ft. in accordance with Section 1-19-3.210 and Section 119-8.321 of the Frederick County Code. The ADU is 1,920 sq. ft. and the property size is 4.89 acres. The Property is located at 8904 Opossumtown Pike, Frederick MD 21702.

PROJECT INFORMATION:

ADDRESS/LOCATION: 8904 Opossumtown Pike, Frederick MD 21702
TAX MAP/PARCEL: Tax Map 57, Parcel 0314
ZONE: Agricultural (A)
REGION: Frederick
WATER/SEWER: W-NPS/S-NPS
COMP. PLAN/LAND USE: Agricultural/Rural

APPLICANT/REPRESENTATIVES:

APPLICANT: Luis Beteta/Miles and Stockbridge
OWNER: Luis Beteta
ENGINEER: N/A
ARCHITECT: Carl F. Thomas
ATTORNEY: N/A

STAFF: Mike Paone, Zoning Planner

RECOMMENDATION: Based on the findings and conclusions, as set forth in this staff report, Staff finds that the proposed Special Exception, to allow a 1,920 sq ft ADU on the subject property, complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code.

Attachment:

Attachment#1: ADU 1st Floor Plan
Attachment#2: ADU 2nd Floor Plan
Attachment#3: Final Plat
Attachment#4: Aerial
Attachment#5: Zoning
Attachment#6: Comprehensive Plan
Attachment#7: Environmental Features

Background:

By way of background, the Property is improved with a three-story, approximately 4,032 square-foot main house and a 2,881 square-foot, two-story accessory structure, served by a shared driveway. The accessory structure was originally a 1,600 square-foot pole barn, but the prior owners, the Applicant's parents, expanded it and added a second story. Currently, the accessory structure consists of an approximate 1,920 square-foot ADU and a 960 square-foot home office for the Applicant's cleaning business. The office and garage are not part of this application. The main house has a 2,647 square-foot footprint and the ADU has a 1,320 square-foot footprint. Currently, the Applicant's mother resides in the ADU, and the Applicant resides in the main house.

Special Exception. § 1-19-3.210 Frederick County Code

- A. An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

The Applicant states that he is the owner of the property.

- B. A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

1. The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and

The proposed ADU will be consistent with the intent of the A zone and the Property's Agricultural/Rural land use. The ADU is appropriately set back from the right-of-way and screened from view from the neighboring properties by trees along the property line such that it does not visually interfere with the rural character of the area. The ADU also furthers the stated goals of the *Livable Frederick Master Plan* ("LMFP"). The LMFP broadly encourages diverse and affordable housing options. It also specifically supports "housing for older adults that supports the present and future needs of seniors" and encourages removal of "barriers to enable caring for seniors in housing that accommodates extended and multi-generational families."

2. The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The Applicant states that the ADU is in harmony with the appropriate and orderly development of the surrounding neighborhood. The surrounding neighborhood consists of several large rural residential lots and agricultural properties, many of which are improved and contain multiple structures. Similarly, the Property consists of 4.89 acres, as shown the Record Plat, and is improved with a main house and accessory structure, housing the ADU. Thus, the ADU (and the accessory structure in general) are in harmony with the orderly development of the neighborhood. Furthermore, the ADU use has existed on the Property for 16 years without complaint from neighboring property owners.

3. Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The Applicant states that he does not anticipate that the ADU will produce any noise, fumes, vibrations or other characteristics beyond those inherently associated with an ADU at any other location within the A zone. The ADU has adequate parking at the terminus of the driveway to serve the accessory structure. It has an agricultural character and style by architectural design and use of building materials such as a metal roof and siding, all of which are compatible with the character of the neighborhood. Further, any visual impact of the ADU accessory structure on the rural surroundings is minimized by its low-scale (20 feet tall) and its location to the Property's rear corner. Additionally, the existing trees along the adjacent lot lines visually screen the accessory structure from neighbors.

4. Parking areas will comply with the off-street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The Applicants state that there is plenty of parking to accommodate the main house and the ADU in the driveway. There will a separate driveway serving the ADU. The available parking exceeds the ADU requirement.

5. The road system providing access to the proposed use is adequate to serve the site for the intended use.

The Applicant states that off-street parking for the ADU is provided at the terminus of the driveway serving the accessory structure and screened from the adjoining residential use by the perimeter landscaping. The driveway serving the accessory structure is separate from the main house driveway and laid out in a manner to achieve maximum safety. There is adequate space within the driveway to safely maneuver a vehicle to enter and exit the parking area.

- C. In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in §§ [1-19-8.320](#) through [1-19-8.355](#) of this Code.

The Applicant states that he understands this requirement.

- D. A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under this chapter and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of this chapter and may be grounds for termination of the special exception.

The Applicants state that he understands this requirement.

E. The Board of Appeals shall not grant a special exception unless and until:

- (1) A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested; and

The Applicant states that he has done this.

- (2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

The Applicant states that he understands this requirement.

G The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

The Applicant states that he understands this requirement.

H No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.

The Applicant states that he understands this requirement.

I If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

The Applicant states that he understands this requirement.

J A decision of the Board of Appeals granting a special exception will be void 5 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The Applicant states that he understands this requirement.

Section 1-19-8.321: The following provisions shall apply to all accessory dwelling units greater than 1,000 square feet in the RC, A, R1, R3, R5, R8, R12, R16, VC, MXD, PUD and MX districts.

A. Only 1 accessory dwelling unit may be created on a lot.

The Applicant states that he understands this requirement.

B. Accessory dwelling units greater than 1,000 square feet shall be allowed in single-family dwellings, in an accessory structure, or built as a separate accessory structure, on a single-family lot.

The Applicant states that the detached ADU (1,920 square feet) is greater than 1,000 square The main house is comprised of a total of 5,600 square feet.

- C. The owner of the property must reside in the principal dwelling or in the accessory dwelling unit.

The Applicant states that that he understands this requirement.

- D. There must be at least 1 additional parking space provided for the accessory dwelling unit. On-street parking may be utilized to meet this requirement.

The Applicant states that that he understands this requirement.

- E. An accessory dwelling unit located in an accessory structure or built as a separate accessory structure must comply with the accessory structure requirements of § 1-19-8.240(B).

The Applicants state that that they understand this requirement.

- F. ADUs are intended to serve ongoing housing needs of county residents. Short term rental of ADUs in the nature of extended stay hotels, Airbnbs, or seasonal temporary housing is not permitted.

The Applicants state that that they understand this requirement.

- G. The owner of the principal residence shall file an annual statement with the Zoning Administrator verifying that the conditions under which the special exception was granted remain the same.

The Applicants state that that they understand this requirement.

- H. If the ownership of the lot changes, the subsequent owner must provide a statement to the Zoning Administrator as to the continuing use and eligibility of the accessory dwelling unit. -

The Applicants state that that they understand this requirement.

- I. Due to the nature of this use, site plan approval can be granted by the Zoning Administrator in lieu of the Planning Commission.

The Applicants state that that they understand this requirement.

- J. An accessory dwelling unit meeting the provisions of § 1-19-8.212 shall be considered a permitted accessory use and therefore not subject to this section.

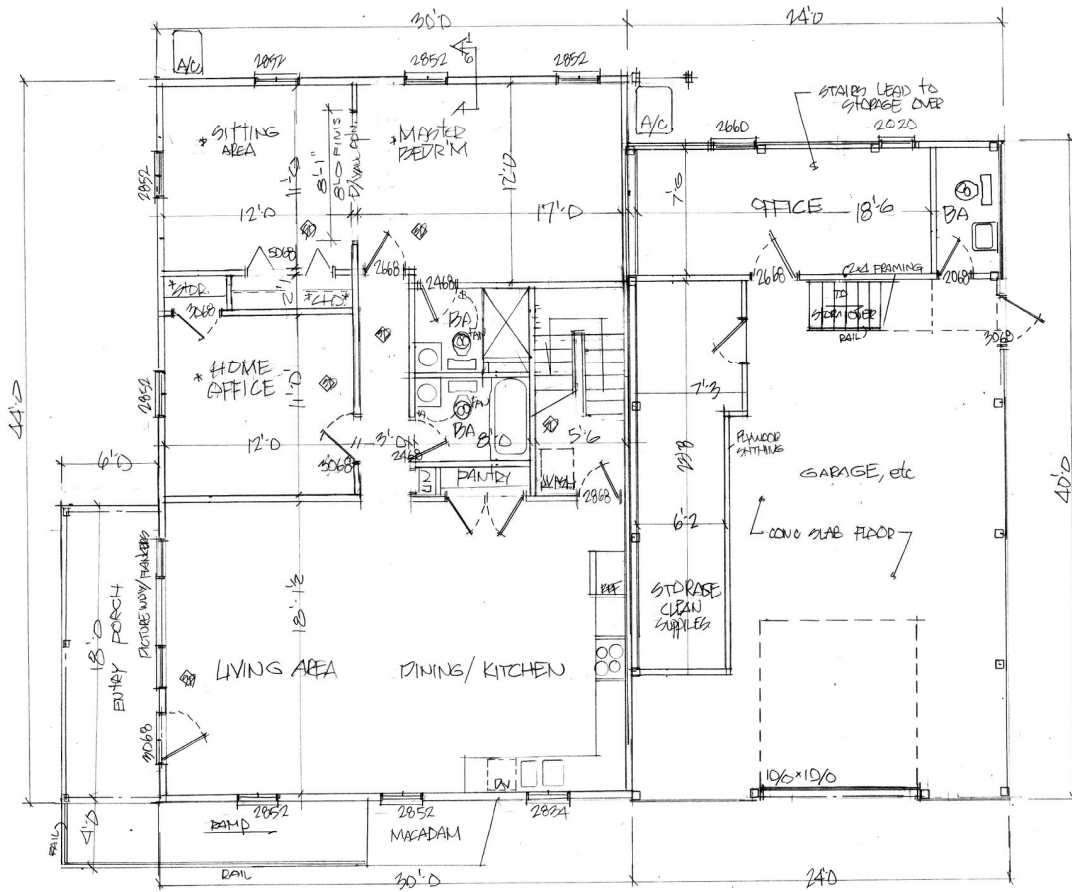
The Applicants state that that they understand this requirement.

RECOMMENDATION

Based on the findings and conclusions in the staff report, Staff finds that the proposed Special Exception, to allow a 1,920sq ft ADU on the subject property, complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning.

1-19-3.210.I: A decision of the Board of Appeals granting a special exception will be void 5 years from the date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in the accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the Applicant, a time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

Attachment#1: First Floor Plan



MAIN FLOOR PLAN 1/4" = 1'-0"

- DIMENSIONS ARE TO FINISH SURFACES
- WALL THICKNESS - INTERIOR - $3\frac{1}{2}"$ ACTUAL + $\frac{1}{2}"$
 \therefore WALL PA SIDE = $4\frac{1}{2}"$ TOTAL
- SMOKE DETECTOR / CO DETECTOR

* MAY 20, REVISED
FLOOR LAYOUT

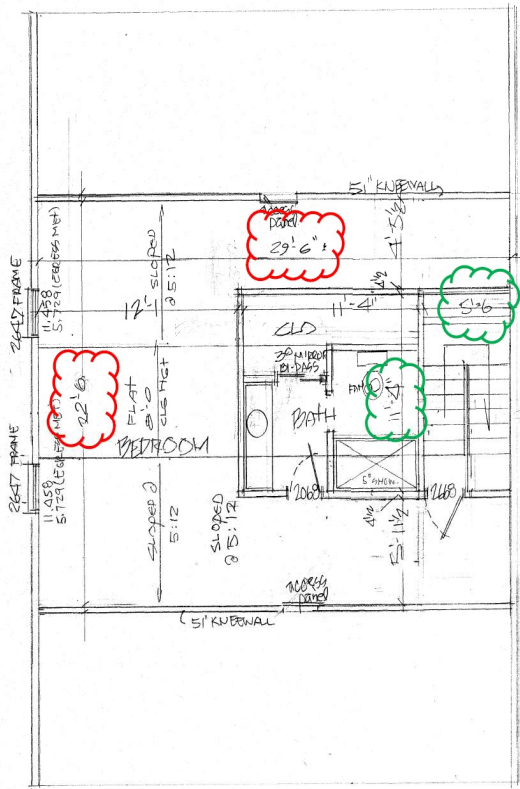
Proposed Changes
8904 OPPOSITOWN PIKE
FREDERICK, MD. 21702

Floor plan
scale: 1/4" = 1'-0"

A.4

MONTENEGRO

Attachment#2: ADU 2nd Floor Plan



UPPER FLOOR PLAN $\frac{1}{4}" = 1'-0"$

- DIMENSIONS TO FINISH SURFACES
- WALL THICKNESS - INTERIOR - $9\frac{1}{2}"$ ACTUAL + $\frac{1}{2}"$
- D/WALL EA SIDE = $4\frac{1}{2}"$

SQUARE FOOTAGE TABULATION -
MAIN FLOOR 1320 SQ. FT.
* UPPER FLOOR w/o STAIR: 600.95 w/o STAIR:
TOTAL 1920.9583 Δ
GARAGE 960
UPPER FLOOR w/o STAIR: 662.75 SQ. FT.
" " w/o STAIR: 600.95 SQ. FT.

Upper Floor Dimensions w/ Stairs

Stair Dimensions

Exhibit J

Upper Floor Dimensions
Clarification Exhibit

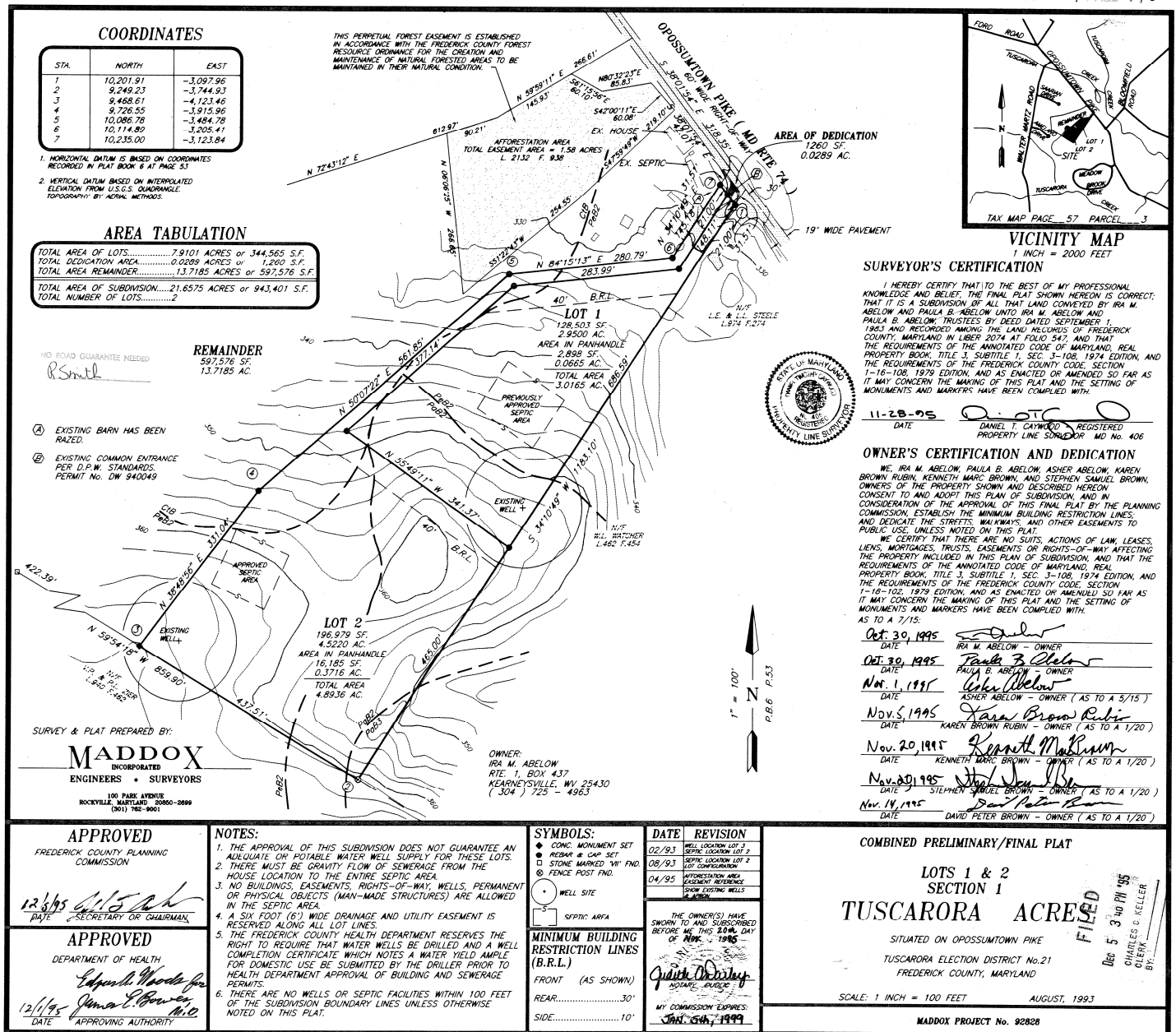
REV Δ 4-21-2023

AG-BUILT
8904 OPRESSUMTOWN AVE
FREDERICK, MD. 21702

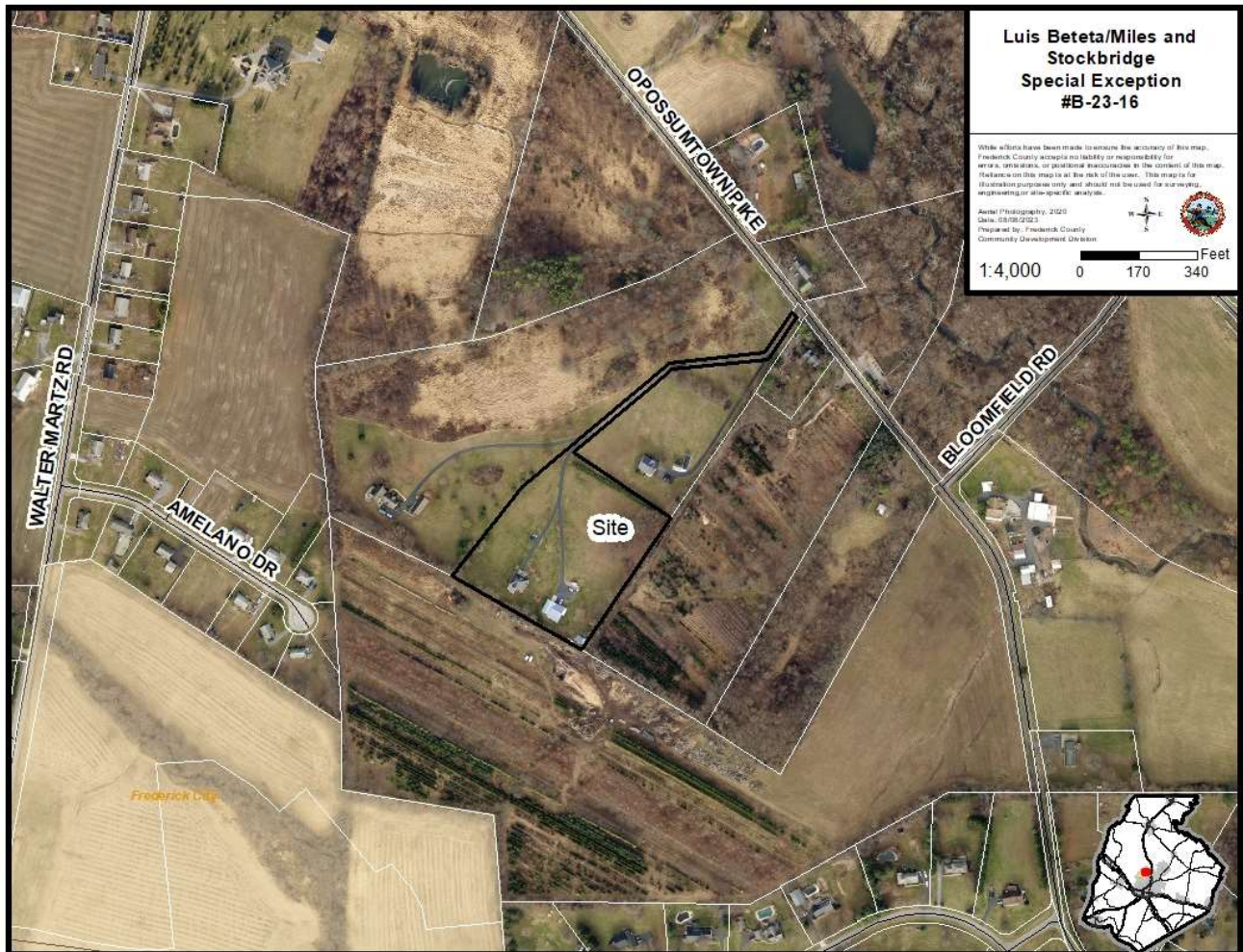
FLOOR PLAN
SCALE: 1/4" = 1'-0"

A.5
MONTENERO

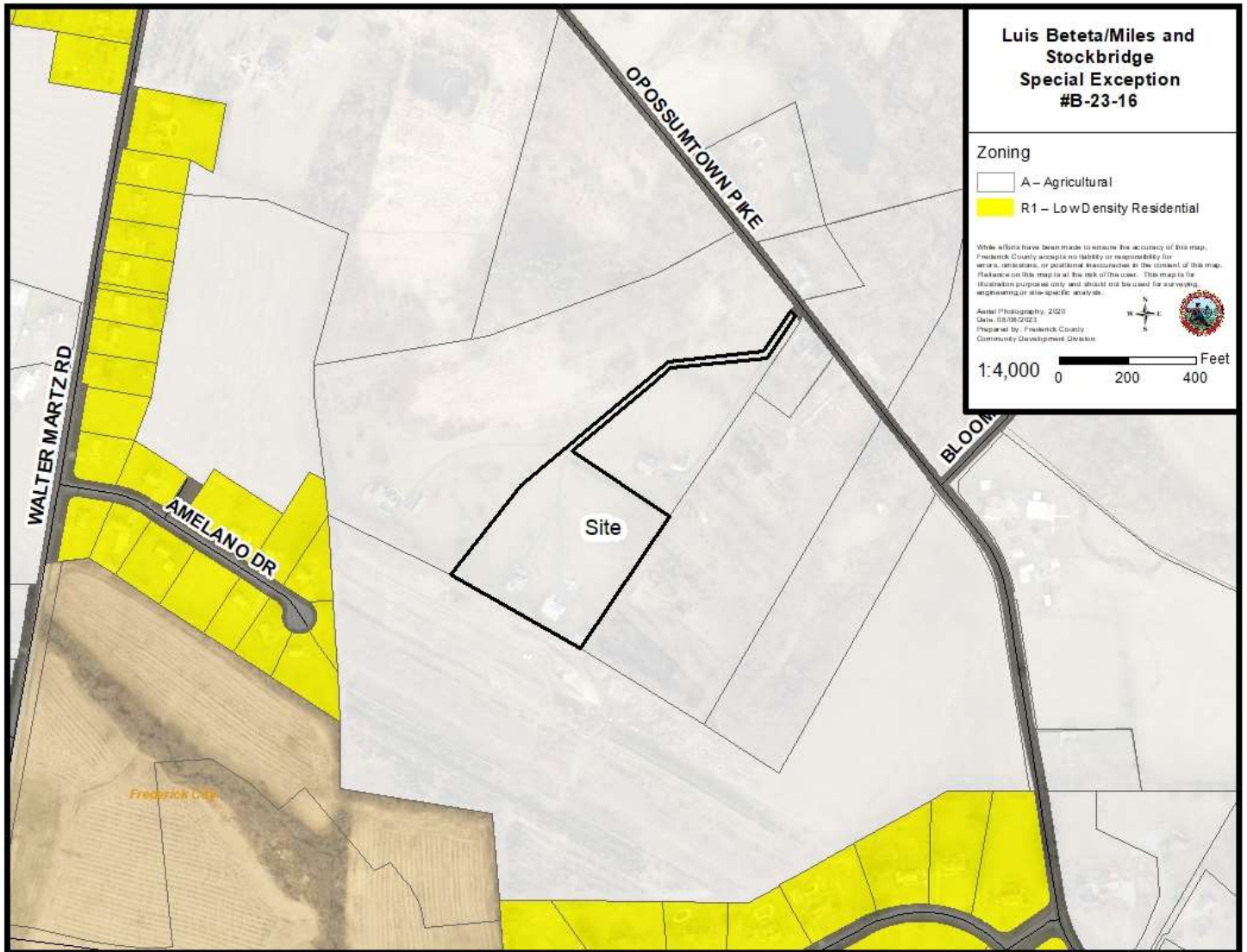
Attachment#3: Final Plat



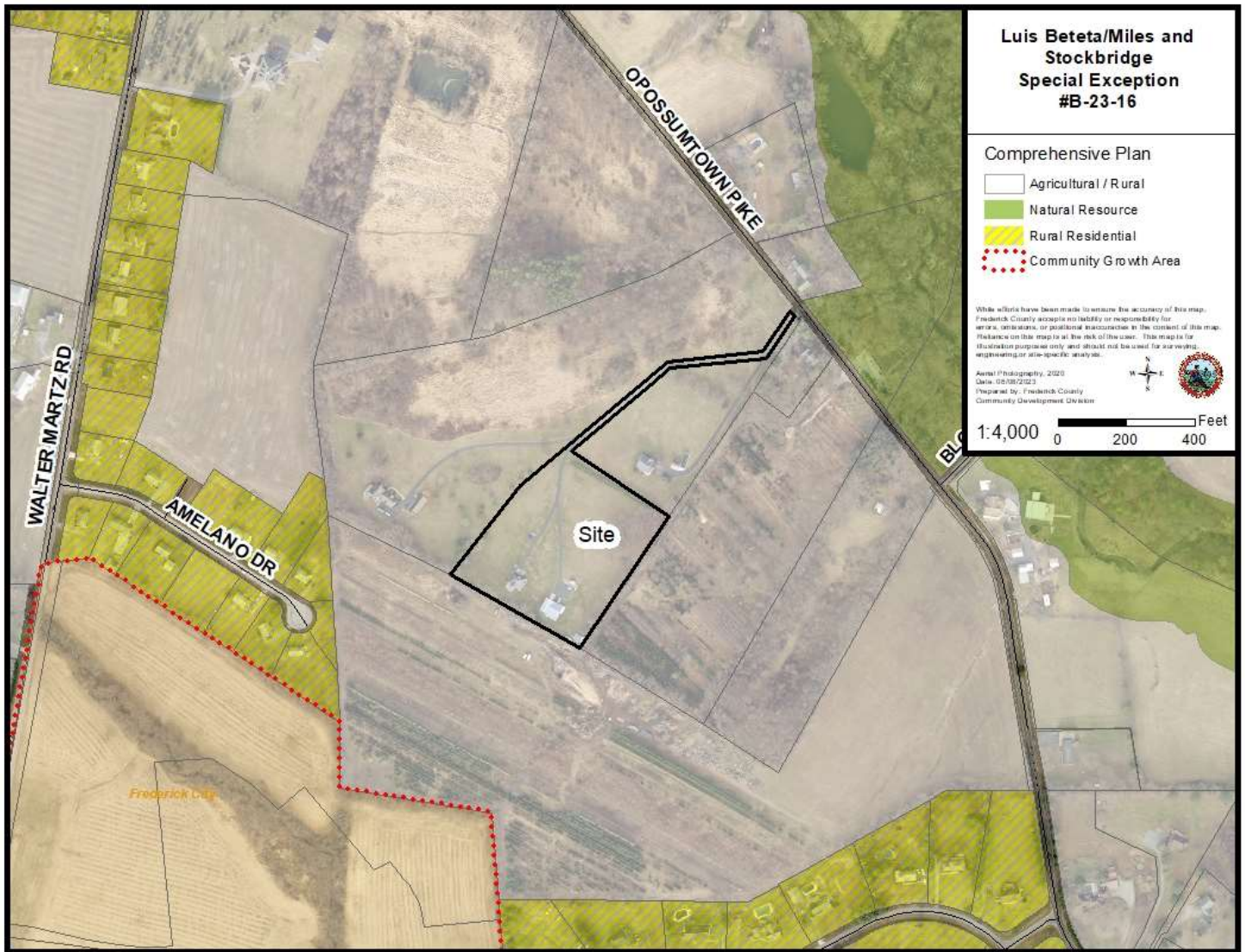
Attachment#4: Aerial Map



Attachment#5: Zoning Map



Attachment#6: Comprehensive Plan



Attachment#7: Environmental Features

